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United States District Court, S.D. New York.

David REDMOND and Albert May,[1] Plaintiffs,
v.
James GARVEY,[2] Sheriff of Orange County,
Defendant.

No. 91 Civ 6777 AGS. | Sept. 10, 1998.

Opinion

OPINION AND ORDER

SCHWARTZ, J.

***1** In this action brought pursuant to 42 U.S.C. § 1983, two former inmates of the Orange County Jail assert that the conditions of their confinement violated their constitutional rights as well as the terms of a consent judgment signed by this Court on October 27, 1978, and later the subject of *Merriweather v. Sherwood,* 518 F.Supp. 355 (S.D.N.Y.1981) (Weinfeld, J.). Before the Court is defendant's motion for summary judgment pursuant to Fed.R.Civ.P. 56(b). For the reasons set forth below, defendant's motion is granted.

BACKGROUND

Plaintiffs commenced this action *pro se* on or about October 8, 1991. At that time, plaintiffs were both prisoners incarcerated at the Orange County Jail (the "Jail").[3] Their complaint alleges violations of various constitutional rights, including rights protected under the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and of the consent decree entered by former United States District Judge Edward Weinfeld in *Merriweather v. Sherwood,* a class action suit commenced in 1977. Specifically, plaintiffs challenge the sufficiency of the Jail's medical care, dental care, law library and recreational programs, among other things. Plaintiffs also allege that the Jail denied inmates access to Catholic religious services. Plaintiffs seek monetary damages of $1 million each and injunctive relief.

DISCUSSION

A motion for summary judgment shall only be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The burden rests on the moving party to demonstrate the absence of a genuine issue of material fact and all inferences and ambiguities are resolved in favor of the party against whom summary judgment is sought. *Gallo v. Prudential Residential Servs., Ltd. Partnership,* 22 F.3d 1219, 1223–24 (2d Cir.1994) (citations omitted). To defeat a summary judgment motion, the non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (citations omitted). Rather, the non-moving party must produce sufficient specific facts to establish a genuine issue of material fact for trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322–24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

The Court finds that in the instant action, plaintiffs have failed to raise any triable issues of fact, and that each of their claims fails as a matter of law. We shall examine each claim in turn.

1. *Inadequate law library* (raised by both plaintiffs)

Plaintiffs allege that the law library at the Jail did not contain complete sets of some books and was missing other sets entirely. The Supreme Court has held that an adequate law library is *one* constitutionally acceptable method to assure meaningful access to the courts, but that other methods are also acceptable (e.g., training inmates to act as paralegals, and the use of law students and volunteer attorneys to provide assistance). *See Bounds v. Smith,* 430 U.S. 817, 830–31, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). At the time that plaintiffs were in the Jail, they were represented by counsel. Obviously, this was sufficient to protect their Sixth Amendment rights, and summary judgment is appropriate as to this claim.

2. *Inadequate medical care* (Plaintiff May only)

***2** The Supreme Court has held that in order to succeed with a claim for inadequate medical care under the Eighth Amendment, a prisoner must demonstrate "deliberate indifference to serious medical needs." *Estelle v. Gamble,* 429 U.S. 97, 107, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Negligence in diagnosis or treatment does not suffice, even when it rises to the level of medical malpractice. *Id.* Rather, the medical care must be so inadequate that it may be said to constitute "an unnecessary and wanton infliction of pain" or to be "repugnant to the conscience of

mankind." *Id.* at 106–07.

In the Complaint, plaintiff May alleges that he had a severe back problem which the Jail refused to treat. (Compl. at 4.) At his deposition, however, he stated that he was seen by a doctor at the Jail (May Dep. at 32), and that he was given medication for pain (*id.* at 35–36). It never took more than 48 hours to see a doctor. (*Id.* at 36–37.) Plaintiff was not dissatisfied with the doctor, although he "disagreed with his general attitude." (*Id.* at 37.) Such treatment does not evidence "deliberate indifference to serious medical needs," and summary judgment is appropriate in regard to this claim.

3. ***Inadequate dental care*** **(Plaintiff Redmond only)**
The "deliberate indifference" standard also applies to claims of inadequate dental care. Plaintiff Redmond alleges that he "had one tooth pulled and was denied further dental care." (Redmond Opp'n ¶ 4.) At his deposition, plaintiff stated that he complained of a severe toothache, and that he believed that the dentist at the Jail pulled that tooth. (Redmond Dep. at 25.) He admitted that his teeth were "in real bad shape" and that he had gum disease (*id.* at 24), but seems to blame the Jail for not doing more to save the teeth (*id.* at 37). It would appear that the Jail provided all medically necessary dental care, given the deteriorated condition of plaintiff's teeth and gums. Summary judgment is appropriate in regard to this claim.

4. ***Failure to provide a Catholic priest*** **(Plaintiff Redmond only)**
Plaintiff alleges that "the Orange County Jail did not permit a Catholic Priest to enter the Orange County Jail while he was there, to provide ministerial services to the inmates." (Pl.'s Opp'n ¶ 5 .) He also claims that a mass was held on September 5, 1991, but that he and several other prisoners were not informed of this in time to attend. (Compl.¶ IV–A.) The Second Circuit has "long held that prisoners should be afforded every reasonable opportunity to attend religious services whenever possible." *Young v. Coughlin,* 866 F.2d 567, 570 (2d Cir.1989).

Defendant has submitted an affidavit from a former employee of the Jail stating that a Father Hopgood conducted religious services at the Jail throughout almost all of plaintiff's stay there. (Affidavit of Al Siruchek ("Siruchek Aff.") ¶ 2.) Following Father Hopgood's death, there was a one or two week period when a priest was not available. (*Id.*) The Court finds that these statements, which contradict plaintiff's assertions, serve merely to point up an issue of material fact for the jury, and do not provide a basis for dismissing this case on summary judgment.

***3** The Court also finds, however, that plaintiff has failed to allege defendant's personal involvement in the actions underlying this claim. Defendant, as Sheriff of Orange County, was in charge of the Jail. However, "[a]t no time was Sheriff Garvey directly involved in the religious program at the Orange County Jail. All arrangements and planning were done by [Al Siruchek]." (Siruchek Aff. ¶ 4.) In a case directly on point, the Second Circuit has stated:

> Absent some personal involvement by [defendant] in the allegedly unlawful conduct of his subordinates, he cannot be held liable under section 1983. Dismissal of a section 1983 claim is proper where, as here, the plaintiff does no more than allege that defendant was in charge of the prison.

Gill v. Mooney, 824 F.2d 192, 196 (2d Cir.1987) (internal citations omitted).

5. ***Inadequate recreation*** **(both plaintiffs)**
Plaintiffs raise a variety of related claims which may be summarized as forced idleness, lack of recreational programs, and confinement to the tier 24 hours a day. (Compl.¶ IV.) In his deposition, however, plaintiff Redmond stated that inmates were given one hour each day of outdoor recreation, weather permitting. (Redmond Dep. at 45–47.) The Second Circuit has held that allowing prisoners as little as an hour a day of outdoor exercise does not constitute cruel and unusual punishment under the Eighth Amendment. *See Anderson v. Coughlin,* 757 F.2d 33, 34, 36 (2d Cir.1985). Summary judgment is appropriate in regard to this claim.

6. ***Denial of visitation*** **(Plaintiff Redmond only)**
Plaintiff claims that he "was denied visitation with family members on several occasions because he was talking while on his way to the visitation room." (Pl.'s Opp'n ¶ 7.) In his deposition, plaintiff stated that this only occurred twice. (Redmond Dep. at 15.) Although it appears that the complete suspension of visiting privileges violates an inmate's liberty interest, *see Kozlowski v. Coughlin,* 539 F.Supp. 852, 856–58 (S.D.N.Y.1982), this is not such a situation. Here, plaintiff was only denied visitation twice, and the denials resulted from disciplinary infractions committed in connection with the visits.[4] Prison officials are permitted to impose reasonable regulations on visitation. *See Morrison v. LeFevre,* 592

F.Supp. 1052, 1079 (S.D.N.Y.1984). Summary judgment is appropriate in regard to this claim.

7. ***Confiscation of property*** **(Plaintiff May only)**

At his deposition, plaintiff claimed that his AM/FM radio had been confiscated without due process. (May Dep. at 86.) While it is not entirely clear what transpired, it would appear that plaintiff's possessions, including the radio, were packed up by prison personnel when plaintiff was moved from one tier to another. A hearing was subsequently held, and plaintiff's possessions were returned to him. This sort of de minimis deprivation of property does not rise to constitutional dimensions. Summary judgment is appropriate in regard to this claim.

CONCLUSION

***4** For the reasons set forth above, defendant's motion for summary judgment is granted. The Clerk of the Court is directed to enter judgment for the defendant on all claims. The Clerk shall thereafter close the file in this action.

SO ORDERED.

Footnotes

1 The caption is hereby amended to reflect the fact that the actions by plaintiffs Jamie Bulson and Larry Patterson were dismissed for failure to prosecute on November 15, 1996; the action by plaintiff John J. Clark was dismissed for failure to prosecute on March 27, 1998; and the action by plaintiff Walter Francis Handlin was dismissed for failure to prosecute on September 9, 1998.

2 Sheriff Garvey is now deceased.

3 Plaintiff Redmond was in the Jail from July 1, 1991 to September 23, 1991. (Redmond Opp'n ¶ 2.) Plaintiff May was in the Jail from February 1991 to January 1992. (Def.Mem. at 1.)

4 Thus, *Chambers v. Coughlin,* 76 A.D.2d 980, 429 N.Y.S.2d 74 (App.Div.1980), relied upon by plaintiff for the proposition that state regulations forbid deprivation of visitation as punishment, is inapposite. In that case, the Court simply held that inmates may not be deprived of visitation for *unrelated* misconduct.